

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE: STRYKER LFIT V40 FEMORAL
HEAD PRODUCTS LIABILITY LITIGATION**

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MDL No. 17-md-2768-IT

This Document Relates To:

All Cases

**CASE MANAGEMENT ORDER NO. 4
(Governing the Bellwether Selection and Trial Process)**

December 8, 2017

APPLICABILITY OF THIS ORDER

This Order sets forth the Court's instructions regarding the bellwether selection and trial process in MDL Docket No. 2768 ("MDL No. 2768"). This Order applies to all cases previously or hereafter transferred to this MDL, or those which are directly filed in this District for consolidation with this MDL proceeding.

A. Process for Selection into the Initial Bellwether Discovery Pool

1. On or before **February 2, 2018**, each side shall select nine (9) cases for inclusion in the Initial Bellwether Discovery Pool.
2. A case may be available for selection into the Initial Bellwether Discovery Pool where (1) the case was filed on or before **December 12, 2017**, and (2) the plaintiff has served a substantially completed Plaintiffs' Fact Sheet on or before **January 12, 2018**.
3. The eighteen (18) cases identified by the parties shall be the Initial Bellwether Discovery Pool.

B. Order of Depositions

1. The parties shall endeavor to schedule depositions in the following order:
 - a. Plaintiff and Plaintiff's spouse/significant other (parties will make reasonable efforts to conduct these depositions on consecutive days.)

- b. Implanting/Revising/Current Treating surgeon (if revising/treating surgeon(s) is different than the surgeon who implanted the LFIT device, the order of deposition shall be: (a) implanting surgeon, (b) surgeon who performed the revision surgery, and (c) the current treating surgeon.)

2. Examination of Physicians

- a. Implanting physicians: Plaintiffs will get to question first at deposition the implanting physicians for the nine plaintiffs that Plaintiffs chose to be part of the bellwether pool. Defendants will get to question first the implanting physicians for the plaintiffs that Defendants selected.
- b. Revising/Current Treating physicians (only if different than the implanting physician): Plaintiffs will get to question first at deposition the revising/treating physicians for the plaintiffs selected by Defendants, and Defendants will get to question first the revising/treating physicians for the plaintiffs selected by Plaintiffs. Plaintiffs' proposed additional language will be addressed in January 2018.

C. Depositions and Contact with Implanting and Treating Physicians

1. Scheduling

- a. Plaintiff's Counsel shall contact the implanting and revision surgeons for scheduling. If the depositions of the surgeons are not scheduled within a reasonable amount of time, counsel for HOC may contact the surgeons to schedule.

2. Fees

- a. Plaintiffs and Defendant shall evenly split any reasonable witness fee charged by an Implanter or Treater witness for time spent preparing for and providing his/her deposition testimony.

3. Contact with Physicians

- a. Defendant's proposed language regarding contact with physicians will be addressed in January 2018.

D. Dismissal of Potential Bellwether Cases

- 1. Any case that is dismissed by Plaintiff before **October 4, 2018**, shall be replaced by a case selected by Defendant. Any case settled before **October 4, 2018**, shall be replaced by a case selected by Plaintiffs.

2. For any case dismissed or settled after **October 4, 2018**, the parties shall meet and confer on how the case should be replaced, if at all. If the parties cannot agree, they shall submit their respective positions to the Court.

E. Process for Selection into the Initial Bellwether Trial Pool

2. On **September 4, 2018**, each side shall submit a revised proposal to the court as to the number of bellwether cases to include in the Initial Bellwether Trial Pool, and shall address in said proposal whether the goals of the MDL, as set forth at Paragraph 3(b) of MDL Order No. 5 [#11], are better served by proceeding only with cases involving hip implant devices which Plaintiff alleges caused his or her injury, consisting in part of an LFIT V40 head and an Accolade TMZF stem, or whether any case involving an LFIT V40 head should be eligible for the Initial Bellwether Trial Pool.
3. The court anticipates thereafter adopting a process for selection that will result in selection of cases by no later than **October 5, 2018**.

F. Process for Selection into Subsequent Bellwether Discovery and Trial Pools

1. At a reasonable time after the verdict has been reached in the second initial bellwether trial, the parties will meet and confer regarding a protocol for additional bellwether discovery and trials.

IT IS SO ORDERED.

Date: December 8, 2017

/s/ Indira Talwani
United States District Judge